

Phillip Guidice, Commissioner
Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

RE: Responsive Comments Addressing Section 105 of Chapter 169 of the Acts of 2008

Dear Commissioner Guidice:

NSTAR Electric would like to submit the following comments as requested by the Department of Energy Resources (DOER) in response to comments filed by a number of parties in the investigation of the feasibility of instituting a capacity and a netting requirement on renewable energy imported into the ISO-New England area in order to qualify under the MA renewable portfolio standard (RPS) program.

Under the Green Communities Act (GCA) the DOER has broad powers to determine the definition of “Feasible”

Many words were written to define the meaning of the term feasible. This is appropriate in that the DOER was not asked to simply promulgate rules to implement Section 105(c) and (e) of the (GCA). Instead DOER was asked to make a determination on the feasibility of these requirements. This gives the DOER a much greater degree of responsibility and discretion in determining the outcome of this proceeding. Constellation Energy stated correctly on page 6 of their submitted comments;

“As a general matter, regulatory bodies always have discretion in implementing statutes. In this instance, however, the DOER has greater discretion still. In this instance, the Legislature has specifically directed the DOER to determine whether or not these restrictions are feasible. Therefore the Legislature has granted the DOER more than the usual deference bestowed upon regulatory bodies to implement their mandates”.

Customers Cost must be Taken into Consideration When Considering Feasibility

It is necessary and appropriate for the DOER to consider costs when determining feasibility. Regarding the issue of customer costs, NSTAR Electric completely disagrees with the statement made by Ridgewood Power when they state on page 3 of their comments “The DOER, as well as those advocates of this cost-benefit consideration argument, is simply wrong”

To increase customer costs without a corresponding increase in benefits serves only to enrich those who receive the increased payment. It would be hard to imagine a circumstance where the Legislature in crafting the Green Communities Act did not intend for DOER to consider the ultimate cost to customers. The fact that the DOER was directly instructed by the Legislature to consider feasibility (and not simply write rules) underscores this point.

Navigant Consulting Inc. (Navigant) Report on Renewable Energy Potential

Navigant has produced a study for the DOER and the Massachusetts Renewable Energy Trust “MRET” entitled “Potential for Renewable Energy Development in Massachusetts”. In that report Navigant attempted to quantify the potential for renewable development. Navigant considered whether or not renewable development was theoretically, technically or economically feasible. All three methods produced development potential in excess of what is required under the Massachusetts RPS in the year 2020. In fact Navigant, in the report mentioned above on page 2, categorizes the total economic potential in Massachusetts is “more than sufficient to meet our RPS requirements in 2020 at current loads.”

In their comments to DOER on this import capacity feasibility issue, Cape Wind seems to rely on Navigant’s statement when making the argument in section II (a) of their comments:

- a. The recent Navigant report confirms that it is feasible to satisfy the renewable policy goals of the Massachusetts RPS in compliance the import-related provisions of Section 105.

Cape Wind comments at p. 3. However Page 2 of the Navigant report highlights a different dynamic in reference to the supply/demand balance in the year 2020:

Projects in Massachusetts currently under construction, design, or consideration, if approved and developed, would generate 3.7 million MWh....Completion of these projects would meet roughly half of the obligation...

The difference between these two statements is striking. On the one hand we have the economic potential to provide all of the Massachusetts RPS requirements from resources within the commonwealth. On the other hand everything under design construction or even consideration, if it were to be built, would only provide half of our requirements in the year 2020.

In developing its report, Navigant interviewed renewable developers in order to get a sense of what comprised the gap. Although certain concerns surrounding long-term contract opportunities and rules for selling excess electricity back to the utility seem to have been overcome by the GCA, others have not. Developers still face a complicated permitting process and a general reluctance by local residents to have someone build generation resources in their neighborhoods, sometimes referred to as NIMBY or not in my back yard. There is a possibility that while Massachusetts renewable generation is economically feasible, it may not be practically feasible as illustrated by the difficulty in siting such generation to date.

Massachusetts renewable resource development is not suffering because of any lack of capacity commitment to the region from imports. If imports are restricted though, the basic economic principles of supply/demand dictate that prices paid for renewable

energy credits will increase. Prices will increase as a result of the restriction of supply and Massachusetts customers will see their bills rise as a result.

NSTAR Electric therefore urges the DOER to reject arguments focused singularly on the economic feasibility of meeting Massachusetts RPS requirements solely with Massachusetts resources, and instead ensure that practical considerations are taken into account.

Requiring External Renewables to Provide Capacity Does Not Level the Playing Field

Currently internal renewable resources are not required to be a capacity resource to be qualified to provide Massachusetts RECs. Renewable generation inside the ISO-NE has the opportunity to submit a de-list bid into the forward capacity auction. If accepted, they may choose to export their capacity to a control area outside the NE-ISO while providing energy to New England and RECs to Massachusetts. Requiring renewable generators external and adjacent to the ISO-NE to provide capacity is in effect creating an uneven playing field. Ridgewood Power Management in their reply comments page 2 acknowledges that not all qualified internal renewable generation is supplying capacity;

“Currently, no external renewable generator qualified to participate in the MaRPS is a capacity resource for the ISO-NE, while *virtually* all internal renewable generators currently qualified are capacity resources in ISO-NE²”. (emphasis added).

The fact is that generators within the NE-ISO can be qualified to sell RECs in Massachusetts without being a capacity resource. We should not require something from external generators that we do not require from internal generators.

Legal Implications of Section 105

NSTAR continues to believe that Section 105 if implemented may be susceptible to legal challenges. We have read through the comments posted on the DOER website on this issue, which do not set forth any compelling arguments to the contrary. Additionally we would like to point out what we perceive to be a particularly notable error. Cape Wind makes a point on page 8 of their comments that implementation of Section 105(c) would not cause internal and external resources to be treated differently, pertaining to Massachusetts RPS eligibility:

Further, Section 105(c) makes absolutely no distinction as to program eligibility on the basis of in-state versus out-of-state production.² These distinctions set such program apart from more troublesome precedents that involved prohibitions, restrictions or differential taxation burdens upon import, in a manner that improperly impeded or frustrated external commerce.

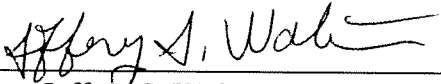
This reasoning seems to indicate that internal and external resources will not be treated differently as to their Massachusetts eligibility, and therefore the commerce clause should not apply. This is simply not the case. The implementation of Section 105(c) would

require external generators, those outside of and adjacent to NE-ISO, to be a capacity resource in New England in order to qualify in the Massachusetts RPS. Resources internal to the ISO are not required to be a capacity resource in order to be eligible for the MA RPS.

Conclusion

NSTAR Electric continues to believe that requiring renewable imports to be a capacity resource in order to provide renewable energy credits is not feasible. Likewise, NSTAR Electric believes that imposing any kind of netting requirement is also infeasible. If those requirements are imposed, external generators are likely to sell to other markets and exclude sales to Massachusetts. This will have the net effect of lowering supply while increasing costs for MA electric ratepayers.

NSTAR ELECTRIC COMPANY

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